

Message Text

CONFIDENTIAL

PAGE 01 PEKING 00805 01 OF 02 250352Z
ACTION EA-12

INFO OCT-01 ISO-00 AGRE-00 CEA-01 CIAE-00 COME-00
DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02 OMB-01
DOE-15 /108 W

-----127685 250403Z /63

R 250250Z MAR 78
FM USLO PEKING
TO SECSTATE WASHDC 0221
INFO AMCONSUL HONG KONG

C O N F I D E N T I A L SECTION 1 OF 2 PEKING 0805

E.O. 11652: GDS
TAGS: ETRD CH US
SUBJ: PRC POLICY ON TRADEMARKS AND INDUSTRIAL PROPERTY
PROTECTION

REF: PEKING 798

1. SUMMARY. CCPIT LEGAL DEPARTMENT DIRECTOR JEN CHIEN-HSIN HAS PROVIDED USLO WITH DOCUMENTATION ON PRC TRADEMARK REGISTRATION PROCEDURES AS THEY APPLY TO US FIRMS. IN GENERAL, THE REGULATIONS ORIGINALLY PROMULGATED IN 1963 STILL APPLY, BUT WITH SOME CHANGES BROUGHT ABOUT BY A NEW PRC POLICY OF EXTENDING TRADEMARK PROTECTION ON THE BASIS OF "RECIPROCITY." (THIS NEW POLICY APPARENTLY PROVIDED THE RATIONALE FOR EXTENDING TRADEMARK PROTECTION TO US FIRMS, AS WELL AS SIMPLIFYING THE APPLICATION PROCEDURES TO SOME EXTENT.) THE PRC CURRENTLY AFFORDS FOREIGN FIRMS NO PROTECTION OF INDUSTRIAL PROPRIETY RIGHTS OTHER THAN THAT SPECIFICALLY NEGOTIATED BY THE FIRM IN ITS SALES CONTRACT. HOWEVER, JEN SUGGESTED THAT THIS QUESTION WAS UNDER REVIEW AND "INTERNATIONAL TRADE PRACTICES" WOULD BE ONE CRITERION USED TO DEVELOP A NEW POLICY.
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PEKING 00805 01 OF 02 250352Z

THE CCPIT HAS ASKED USLO TO PROVIDE INFORMATION ON US LAWS AND REGULATIONS PERTAINING TO TRADEMARK AND PATENT PROTECTION. END SUMMARY.

2. USLO OFFICER MET WITH CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE (CCPIT) LEGAL DEPARTMENT DIRECTOR JEN CHIEN-HSIN ON MARCH 23 TO

DISCUSS NEW POLICY OF PERMITTING US FIRMS TO REGISTER TRADEMARKS IN PRC. JEN SAID CCPIT HAD RECEIVED A CABLE FROM THE NATIONAL COUNCIL FOR US-CHINA TRADE, IN RESPONSE TO CCPIT'S LETTER, WELCOMING THE NEW POLICY.

3. JEN PROVIDED USLO WITH FOLLOWING DOCUMENTS RELATING TO TRADEMARK REGISTRATION IN THE PRC:

- A) REGULATIONS GOVERNING TRADE MARKS (PROMULGATED ON APR 10, 1963)
- B) IMPLEMENTING RULES UNDER THE REGULATIONS GOVERNING TRADE MARKS (PROMULGATED ON APR 25, 1963)
- C) CLASSIFICATION OF GOODS
- D) REQUIREMENTS FOR FILING TRADE MARK APPLICATIONS IN CHINA.
- E) POWER OF ATTORNEY
- F) APPLICATION FOR TRADE MARK REGISTRATION
- G) APPLICATION FOR RENEWAL OF REGISTRATION OF TRADE MARK.
- H) APPLICATION FOR ALTERATION ON THE ENTRIES IN THE REGISTER
- I) APPLICATION FOR REGISTRATION OF ASSIGNMENT OF TRADE MARK
- J) FEES PAYABLE FOR TRADE MARK APPLICATIONS. COPIES OF THESE DOCUMENTS BEING TRANSMITTED TO DEPARTMENT BY AIRGRAM. HIGHLIGHTS ARE SUMMARIZED BELOW.

4. JEN'S RESPONSES TO USLO OFFICER'S QUESTIONS SUGGESTED THAT PRC ACTUAL PRACTICE DIFFERS IN SOME RESPECTS FROM WORDING OF THE REGULATIONS. JEN INDICATED, HOWEVER, THAT PRC LEGAL PRACTICES ON THE CONDUCT OF FOREIGN TRADE WERE UNDER REVIEW AND FURTHER CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PEKING 00805 01 OF 02 250352Z

CHANGES MIGHT BE FORTHCOMING. JEN STATED THAT BEGINNING THIS YEAR PRC ADOPTED A NEW POLICY OF EXTENDING TRADEMARKS REGISTRATION ON THE BASIS OF RECIPROCITY. (THIS PRESUMABLY PROVIDES RATIONALE FOR EXTENDING PROTECTION TO US FIRMS, EVEN IN THE ABSENCE OF A BILATERAL AGREEMENT, SINCE PRC STATE TRADING CORPORATIONS ARE ALREADY PERMITTED TO REGISTER THEIR TRADEMARKS IN THE US.)

5. REGISTRATION PROCEDURES. FOREIGN FIRMS MUST FILE TRADEMARK APPLICATIONS WITH THE CCPIT. THE CCPIT ACTS AS THE FOREIGN FIRM'S AGENT WITH THE CENTRAL ADMINISTRATIVE BUREAU FOR INDUSTRY AND COMMERCE (CABIC), WHICH, ACCORDING TO THE 1963 REGULATIONS, ADMINISTERS PRC TRADEMARK REGISTRATION. JEN SPECIFICALLY SAID THAT THE CABIC STILL PERFORMS THIS FUNCTION. WHEN APPLYING FOR REGISTRATION, AMERICAN FIRMS MUST PROVIDE THE FOLLOWING DOCUMENTATION:

- A) A SEPARATE APPLICATION, IN DUPLICATE, FOR EACH TRADEMARK THE FIRM WISHES TO REGISTER.
- B) A POWER OF ATTORNEY, IN DUPLICATE, FOR EACH TRADEMARK. (THIS DOCUMENT EMPOWERS THE CCPIT TO ACT ON BEHALF OF THE FOREIGN FIRM TO REGISTER THE TRADEMARK WITH THE CABIC).
- C) A CERTIFICATE OF NATIONALITY (NO PRESCRIBED FORM) WHICH SHOULD

SHOW THAT THE CORPORATION IS ORGANIZED UNDER US LAW.
D) TWELVE PRINTS OF THE TRADEMARK FOR EACH APPLICATION. THE MEANING AND DERIVATION OF THE TRADEMARK WORD MUST BE CLEARLY EXPLAINED. THE REGULATIONS STATE THAT THE ORIGINAL COPY OF THE POWER OF ATTORNEY AND THE CERTIFICATE OF NATIONALITY MUST BE "LEGALIZED" (I.E., NOTARIZED) BY A CHINESE EMBASSY. JEN INDICATED THAT THE PRCLO IN WASHINGTON IS EMPOWERED TO DO THIS.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 PEKING 00805 02 OF 02 250356Z
ACTION EA-12

INFO OCT-01 ISO-00 AGRE-00 CEA-01 CIAE-00 COME-00
DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02 OMB-01
DOE-15 /108 W

-----127701 250404Z /63

R 250250Z MAR 78
FM USLO PEKING
TO SECSTATE WASHDC 0222
INFO AMCONSUL HONG KONG

C O N F I D E N T I A L SECTION 2 OF 2 PEKING 0805

6. OTHERPROVISIONS. IF TWO OR MORE ENTERPRISES APPLY FOR IDENTICAL OR SIMILAR TRADEMARKS, REGISTRATION IS ACCORDED TO THE FIRST APPLICANT. THE VALIDITY OF THE TRADEMARK REGISTRATION BEGINS FROM THE DATE OF APPROVAL BY CABIC AND IS EFFECTIVE FOR TEN YEARS. AN APPLICATION FOR RENEWAL CAN BE FILED BEFORE EXPIRATION FOR ANOTTHETEN YEAR PERIOD, AND THIS CAN BE FOLLOWED BY RE-APPLICATION FOR A FURTHER TEN YEARS. FORMERLY, THE FOREIGN FIRM WAS REQUIRED TO FURNISH EVIDENCE THAT THE TRADEMARK WAS REGISTERED IN ITS OWN COUNTRY. UNDER THE NEW PRC POLICY OF RECIPROCITY, THIS IS NO LONGER REQUIRED FOR COUNTRIES (INCLUDING THE US) WHICH DO NOT REQUIRED CHINESE CORPORATIONS TO PROVIDE SUCH CERTIFICATION.

7. PRIOR REGISTRATION. USLO OFFICER NOTED THAT IN SOME CASES SUBSIDIARIES OF US FIRMS IN COUNTRIES WITH BILATERAL TRADEMARK AGREEMENTS WITH CHINA MAY HAVE ALREADY APPLIED FOR TRADEMARK REGISTRATION IN THE PRC AND ASKED WHAT ACTION THESE FIRMS SHOULD TAKE. JEN STATED THAT UNDER THE PRC REGULATIONS THE "OWNER"

(I.E., HOLDER) OF THE REGISTRATION ENJOYS AN EXCLUSIVE
RIGHT TO ITS USE. IF THE TRADEMARK IS REGISTERED IN
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PEKING 00805 02 OF 02 250356Z

THE NAME OF A SUBSIDIARY, ONLY THAT SUBSIDIARY "OWNS"
THE RIGHT TO USE IT. IN ORDER TO CORRECT THIS SITUATION
THERE IS AN ASSIGNMENT PROCEDURE BY WHICH THE SUBSIDIARY MAY ASSIGN
THE TRADEMARK TO THE HEAD OFFICE. (THE PROCEDURE AND FORM FOR
DOING THIS ARE INCLUDED IN THE MATERIALS POUCHED TO THE DEPARTMENT.)

8. IN RESPONSE TO ANOTHER QUESTION, JEN SAID THE
TRADEMARKS COULD INCLUDE FOREIGN WORDS. (THIS
APPEARS INCONSISTENT WITH ARTICLE 5 OF THE
"REGULATIONS GOVERNING TRADE MARKS" WHICH STATES,
IN PART, "FOREIGN WORDS SHOULD NOT BE USED IN TRADE
MARKS, BUT TRADE MARKS FOR EXPORT GOODS MAY HAVE
EXPLANATORY FOREIGN WORDING ADDED.")

9. USLO OFFICER ASKED WHETHER ANY CHANGES WERE
CONTEMPLATED IN CURRENT PRC POLICY ON PATENT PROTECTION.
JEN REPLIED AS FOLLOWS: "FOR THE TIME BEING
REGISTRATION OF PATENTS IS NOT PROVIDED FOR IN CHINA.
THIS IS NOT TO SAY, HOWEVER, THAT WE DO NOT PROTECT
PATENTS. PROTECTION FOR FOREIGN TECHNOLOGY, EQUIPMENT,
ETC. CAN BE STIPULATED IN THE IMPORT CONTRACT BETWEEN
THE FOREIGN FIRM AND THE CHINESE TRADING CORPORATION.
THE PATENT PROTECTION, AS STIPULATED IN THE IMPORT
CONTRACT, WILL BE STRICTLY HONORED. THIS IS OUR
APPROACH FOR THE TIME BEING. THE 'COMPETENT DEPARTMENTS' ARE
STUDYING HOW WE WILL PROCEED ON THIS PROBLEM IN THE FUTURE." JEN
ADDED THAT THE PRC FOLLOWED THREE GENERAL PRINCIPLES IN
DEVELOPING POLICY ON THE LEGAL ASPECTS OF FOREIGN TRADE,
INCLUDING PATENT PROTECTION: SELF-RELIANCE, EQUALITY AND MUTUAL
BENEFIT, AND TAKING INTERNATIONAL PRACTICES INTO ACCOUNT. HE
CONCLUDED BY REQUESTING INFORMATION ON US PATENT LAWS, REGULATIONS
AND POLICIES OPERTAINING TO TRADEMARKS AND PATENTS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PEKING 00805 02 OF 02 250356Z

10. COMMENT: ALTHOUGH JEN'S RECITATION OF CURRENT
PATENT POLICY WAS FAIRLY STANDARD, HIS REMARKS SUGGEST THAT CHAGES
ARE CONTEMPLATED. AS PRC PREPARES TO IMPORT LARGE AMOUNTS OF
FOREIGN TECHNOLOGY, THE QUESTION OF INDUSTRIAL PROPERTY
PROTECTION WILL BE OF INCREASING CONERN TO CHINA'S TRADING PARTNERS.
WE UNDERSTAND THAT JAPANESE HAVE ALREADY BEEN PRESSING ON THIS
QUESTION AND HAVE REASON TO BELIEVE CHINESE MAY BE RESPONSIVE.

WOODCOCK

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, TRADEMARKS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978PEKING00805
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780131-0734
Format: TEL
From: PEKING
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780325/aaaaauuh.tel
Line Count: 225
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 37abadbd-c288-dd11-92da-001cc4696bcc
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 PEKING 798
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 11 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3203429
Secure: OPEN
Status: NATIVE
Subject: PRC POLICY ON TRADEMARKS AND INDUSTRIAL PROPERTY PROTECTIION
TAGS: ETRD, EIND, CH, US
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/37abadbd-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014